

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Rashidah Francisco

Complainant

V.

Pablo Fontana

Respondent

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Case No. 32742

Rental Facility: 2701 Snowbird Terrace, Apt.8, Silver Spring, MD 20906 (License # 34672)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 15th day of December, 2011, found, determined, and ordered, as follows:

BACKGROUND

On August 23, 2011, Rashidah Francisco ("Complainant"), former tenant at 2701 Snowbird Terrace, Apt. 8, Silver Spring, MD ("Condominium"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which she alleged that her former landlord, Pablo Fontana, owner of the Condominium ("Respondent"): (1) failed to refund any portion of her \$1,495.00 security deposit plus accrued interest within 45 days after the termination of her tenancy, in violation of Maryland Code (1954, 2003 Repl. Vol., 2007 Suppl.), Real Property Article, Section 8-203(e)(1) ("Real Property Article"); (2) failed to send her an itemized list of damages, together with a statement of the costs actually incurred to repair those damages, within the 45 days after the termination of her tenancy, in violation of Section 8-203 (g)(1) of the Real Property Article, and therefore, pursuant to Section 8-203(g)(2), the Respondent has forfeited the right to withhold any portion of her security deposit plus accrued interest; and, (3) failed to make the required changes in the account with the Washington Gas Company after she vacated the Condominium; consequently, she has been billed for gas usage during the time she was no longer a tenant.

The Complainant asserts that she did not damage the Condominium in excess of ordinary wear and tear during her tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Complainant is seeking an Order from the Commission for the Respondent to refund her entire \$1,495.00 security deposit plus interest, and a penalty of up to three times that amount based on the Respondent's unreasonable withholding of her entire security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department duly referred this case to the Commission for its review, and on October 4, 2011, the Commission voted to hold a public hearing on November 30, 2011. The public hearing in the matter of Rashidah Francisco v. Pablo Fontana relative to Case No. 32742 was held on November 30, 2011.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. The Commission also notes that the Respondent was personally served with the "Summons and Statement of Charges" on October 13, 2011 (Page 35- Commission's Exhibit 1). Present and sworn at the hearing and presenting evidence was the Complainant, Rashida Francisco. The Respondent, Pablo Fontana, failed to appear at the hearing.

The Respondent was notified on the Summons, Statement of Charges and Notice of Hearing that he may make a written request for a continuance of the hearing not less than 5 days prior to the date of the hearing. The Commission received a fax on November 30, 2011 (Commission's Exhibit 2), the same day of the hearing date, from Francis Koh, Esquire, stating he was retained by the Respondent on November 30, 2011, and requested the hearing be postponed due to his need for more time to review the matter. The Commission denied the request for postponement.

Without objection, the Commission entered into the record: (1) the case file compiled by the Department identified as Commission's Exhibit No. 1; and (2) letter dated November 30, 2011, from Koh Law Firm, requesting postponement of the hearing, identified as Commission's Exhibit No. 2.

The Commission decided to keep the record open for seven calendar days, until December 7, 2011, so the Complainant could submit proof of resolution regarding a Washington Gas bill relative to the Condominium. No documentation regarding the Washington Gas Company was submitted by the Complainant and the record was closed on that date.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On July 31, 2008, the Respondent and the Complainant signed a two year lease agreement ("Lease") for the rental of the Property, which commenced on August 1, 2008, and expired on July 31, 2010, for a monthly rent of \$1,495.00 (Commission's Exhibit No.1 – Page 5 through 17).

2. Paragraph 11 of the Lease required the Complainant to pay for the gas bill (Commission Exhibit No. 1 – Page 7).

3. On or about July 31, 2008, the Complainant paid the Respondent a security deposit, in the amount of \$1,495, which amount is receipted in the Lease.

4. By an e-mail dated June 2, 2010, the Complainant advised the Respondent that she would be vacating the Condominium on August 2, 2010 (Commission's Exhibit No. 1 – Page 22).

5. The Commission finds that the Complainant vacated the Condominium on August 2, 2010.

6. The Commission finds credible the Complainant's testimony that a joint final walkthrough took place on August 8, 2010, with the Respondent and his wife; at which time, no damages in excess of ordinary wear and tear were noted, except for a scratch on the wooden floor and a cracked screen frame in one of the bedroom windows. There is no walkthrough inspection report on the record.

7. The Commission finds credible the Complainant's testimony that she provided the Respondent with a forwarding address and e-mail address at the time of the walkthrough and that she did not receive an itemized list from the Respondent.

8. The Commission finds that the Complainant has an outstanding balance of \$757.06 with the Washington Gas Company (Commission's Exhibit No. 1 – Page 4), relative to gas usage for the period August 2010, through July 2011, while she was not a tenant in the Condominium.

9. The Commission finds credible the Complainant's testimony that on August 2, 2010, she contacted the Washington Gas Company and advised them that she was no longer a tenant at the Condominium.

10. The Commission finds credible the Complainant's testimony that the Washington Gas Company advised her that they were not able to contact the Respondent and that he never changed the name on the account to his name.

11. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest which had accrued on her \$1,495.00 security deposit from the commencement of her tenancy, August 1, 2008, until the termination of her tenancy, August 2, 2010, in the amount of \$89.70.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203(g)(1) and (2) of the Real Property Article, "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred"; and, "If the landlord fails to comply with this requirement, he forfeits the right to withhold any part of the security deposit for damages." The Commission concludes that the Respondent failed to send the Complainant within 45 days after the termination of her tenancy, a list of damages claimed against her security deposit. This failure constitutes a violation of Section 8-203 (g) (1) of the Real Property Article, and therefore, pursuant to Section 8-203 (g) (2), the Respondent has forfeited his right to withhold any portion of the Complainant's security deposit for damages.

2. The Commission concludes that the Respondent's failure to pay the Complainant interest which had accrued on her security deposit constitutes a violation of Section 8-203(e)(1) of the Real Property Article, and has created a defective tenancy.

3. The Commission concludes that the Respondent's failure to handle and dispose of the Complainant's security deposit (\$1,495.00) plus accrued interest (\$89.70) in accordance with the requirements of the applicable provisions of Section 8-203, "Security deposits," of the Real Property Article, has caused a defective tenancy.

4. The Commission concludes that the Complainant is liable to the Washington Gas Company for the gas bill relative to the Condominium until the time she vacated, August 2, 2010; and, that any charges subsequent to that date are the responsibility of the Respondent;

5. The Commission concludes that in addition to the Respondent's failure to return the security deposit, he also failed to communicate with the Complainant and the Investigator as to why there was a reasonable basis for withholding the Complainant's security deposit plus interest. Furthermore, the Respondent's failure to address the issue regarding the Washington Gas bill and account after being notified by the Complainant on August 18, 2011, when she filed the complaint (Commission Exhibit No. 1 – Page2), was in bad faith.

6. Although the Commission concludes that the failure by the Respondent to refund any portion of the Complainant's security deposit plus accrued interest was unreasonable and constituted a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Respondent's conduct in wrongfully withholding the Complainant's security deposit and whether or not the Respondent acted in bad faith or has a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct does rise to the level of bad

faith and egregiousness necessary to award a penalty, and therefore, an additional award of \$500.00 as a penalty is granted.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent must pay the Complainant **\$2,084.70**, which sum represents the Complainant's security deposit (\$1,495.00), plus accrued interest (\$89.70), and, a \$500.00 penalty.

Commissioner Jan Patterson, Commissioner David Peller, and Commissioner Nancy Cohen, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondent Pablo Fontana, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Rashidah Francisco, in the amount of \$2,084.70.

The Respondent, Pablo Fontana, is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, he must post a bond with the Circuit Court in the amount of the award (\$2,084.70) if a stay of enforcement of this Decision and Order is sought.

Nancy Cohen, Panel Chairperson
Commission on Landlord-Tenant Affairs